

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

United States Steel Corporation,

Plaintiffs,

vs.

Jon Linc Stine, Minnesota Pollution
Control Agency,

Defendant,

and

Minnesota Center for Environmental
Advocacy, Save Lake Superior
Association, and Save Our Sky Blue
Waters

Defendant-Intervenors.

**NOTICE OF INTERVENTION AND
REASONS FOR CLAIM OF
ENTITLEMENT TO INTERVENE**

Court File No. 62-CV-17-989
Judge William H. Leary, III

To: Plaintiff UNITED STATES STEEL CORPORATION, by and through its attorneys, Rob A. Stefonowicz and Peder A. Larson, Larkin Hoffman Daly & Lindgren Ltd., 8300 Norman Center Drive, Suite 1000, Minneapolis, Minnesota 55431-1194; and Defendant JON LINC STINE, Commissioner, Minnesota Pollution Control Agency, by and through his attorney, Ann E. Cohen, Assistant Attorney General, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127.

Please take notice that the Minnesota Center for Environmental Advocacy (MCEA), Save Lake Superior Association, and Save Our Sky Blue Waters (collectively "Defendant-Intervenors") will move for leave to intervene as defendants in this action to assert the defenses set forth in their proposed answer, a copy of which is attached, on grounds that Defendant-Intervenors have a direct interest in the pending litigation and are so situated that disposition of this action may as a practical matter impede or impair Defendant-Intervenors' ability to protect

this interest. Defendant-Intervenors seek to intervene as a matter of right under Minnesota Rules of Civil Procedure 24.01, and in the alternative seek permissive intervention under Minnesota Rules of Civil Procedure 24.02.

Defendant-Intervenors' intervention is deemed accomplished under Minnesota Rules of Civil Procedure 24.03 unless any existing party to the action objects within thirty (30) days after service of this notice.¹ If any party serves a timely objection, Defendant-Intervenors will file a motion for intervention under Minnesota Rules of Civil Procedure 24.03.

REASONS FOR CLAIM OF ENTITLEMENT TO INTERVENTION

I. Intervention of Right

Defendant-Intervenors are entitled to intervene as a matter of right pursuant to Rule 24.01 because they have an interest in the action that may be affected by the outcome of this matter and the interest is not adequately represented by the named defendant, Minnesota Pollution Control Agency (MPCA). Minnesota Rules of Civil Procedure Rule 24.01 provides:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Minnesota Supreme Court has held that this rule establishes a four part test for intervention as of right. When a non-party demonstrates that (1) its application is timely, (2) it has an interest relating to the property or transaction at issue, (3) the disposition of the action may impair its ability to protect that interest, and (4) it is not adequately represented by existing parties, "the trial court should grant the motion to intervene." *Minneapolis Star & Tribune Co. v.*

¹ On March 22, 2017, the MPCA's attorney indicated in writing that MPCA has no objection to the intervention of Defendant-Intervenors in the pending district court matter brought by U.S. Steel. U.S. Steel's attorney did not provide consent.

Schumacher, 392 N.W.2d 197, 207–08 (Minn. 1986) (applying the test to intervention to unseal court files). The Court “has emphasized that, under modern practice, the extensive use of intervention should be encouraged.” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986) (citations omitted).

First, Defendant-Intervenors’ notice of intervention is timely. This Court has not adjudicated the original parties’ rights and intervention would not prejudice either party. *See Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974) (finding that a delay of filing an intervention of ten months was not untimely because: rights not yet adjudicated, neither party prejudiced, and “the spirit behind the 1967 amendment to Rule 24—that of encouraging all legitimate interventions—requires a liberal application of the rule”). Since Defendant-Intervenors seek to intervene shortly after MPCA answered U.S. Steel’s complaint, and before the first hearing is scheduled, there is no question this request is timely and non-prejudicial.

Second, Defendant-Intervenors have a direct stake in this litigation because U.S. Steel’s lawsuit seeks to undo Defendant-Intervenors’ stipulation and settlement requiring the MPCA to timely reissue the Clean Water Act permit for the Minntac mine tailings basin. In addition, Defendant-Intervenors’ staff have committed resources over many years to engage MPCA and U.S. Steel to address water pollution from the Minntac facility. MCEA objected, for example, to Minntac’s recent expansion because of ongoing water quality violations from the tailings basin that have not been controlled pursuant to law. In response, the company agreed to certain mitigation measures and the expansion was allowed to proceed. Those mitigation measures, however, have not been implemented. (*See* Def.’s Answer and Countercl. at 26, ¶¶ 44–49, Mar. 16, 2017). Defendant-Intervenors, therefore, have a direct interest in the resolution of this action, both in terms of their legal rights under the stipulation agreement and in terms of the resources

they have committed to addressing Minntac's pollution, and resources they will be forced to commit in the future if U.S. Steel is successful in delaying permit issuance.

Third, the disposition of this action could impair Defendant-Intervenors' interests. Because the settlement of Defendant-Intervenors' prior suit requires MPCA to issue a revised permit by a date certain, the delay of this permit beyond that deadline will affect Defendant-Intervenors' legal rights under the stipulated settlement. More broadly, the delay of the issuance of this permit will harm Defendant-Intervenors and their members because pollution will continue unabated longer, and Defendant-Intervenors will need to commit more resources to the issue.

Fourth, Defendant-Intervenors are not adequately represented by defendant MPCA. MPCA has failed to issue a revised permit for nearly twenty-five years, since the permit first expired, and cannot adequately represent Defendant-Intervenors' interest in this action because it has ongoing differences of opinion in key areas of Clean Water Act enforcement with Defendant-Intervenors. Central to these issues is the fact that MPCA is required by federal law to enforce all applicable in-force water quality standards, something that Defendant-Intervenors intend to argue in this proceeding. The fact that MCEA has had to litigate against state agencies over water pollution from this facility numerous times, and that the parties to this case have mutually allowed ongoing pollution of state waters despite an agreement in a Schedule of Compliance to address such pollution, demonstrates that Defendant-Intervenors have a different position than that of the regulating agency.

II. Permissive Intervention

In the alternative, Defendant-Intervenors' answer demonstrates that their claims and defenses are common issues of law and fact that merit permissive intervention. Minnesota Rules of Civil Procedure 24.02 states that:

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact. . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Permissive intervention is therefore a less stringent standard than intervention of right, and within the district court's discretion to permit. *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 691 (Minn. Ct. App. 2001). As addressed above, Defendant-Intervenors' intervention is timely and will not delay or prejudice the original parties' dispute. Defendant-Intervenors' claims have a common issue of law and fact with this action, as is self-evident in the attached answer addressing U.S. Steel's legal claims and offering affirmative defenses.

Dated: April 5, 2017

/s/ Hudson Kingston
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ACKNOWLEDGEMENT

Defendant-Intervenors, by their attorney, Hudson Kingston, acknowledge that sanctions may be awarded under Minnesota Statute Section 549.211 to the opposing party if the Court determines the party or its attorney acts in bad faith, asserts a frivolous claim, asserts an unfounded position to delay or harass, or commits a fraud upon the Court.

/s/ Hudson Kingston
Hudson B. Kingston (#0397994)